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HIGH COURT OF CHHATTISGARH AT BILASPUR
WRIT PETITION (C) NO. 2886 of 2007

Petitioner Dhani Ram Sahu, Aged about 33 years, S/o Puranlal Sahu, R/o village Kharkara, Tehsil-Gariyaband, Dist : Raipur - (C.G.)

Versus

Respondents

1. State of Chhattisgarh Through-Secretary, Panchayat and Village Development, Mantralaya, D.K.S. Bhawan, Raipur, Dist : Raipur- (C.G.)
2. The Chief Executive Officer, Janpad Panchayat Village Chura, Dist : Raipur-(C.G.)
3. The Collector, Raipur-(C.G.)
4. Pyarelal S/o Jagdish, Aged about 40 years, R/o Pandripanidih, Tehsil-Gariyaband, Dist : Raipur-(C.G.)
5. Naresh Kumar S/o Not Known, Aged about 40 years, Village - Kharkara, Development Block Chura, Dist : Raipur-(C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Single Bench :- Hon'ble Shri Justice **Satish K. Agnihotri**

Mr. Kishore Bhaduri, Advocate for the Petitioner.
Mr. Yashwant Singh Thakur, Govt. Advocate for the respondents No. 1 and 3/State.

ORDER
(Passed on this 10th day of May, 2007)

1. By this petition, filed under Article 226 of the Constitution of India, the petitioner impugns the order dated 3/5.2.2007 (Annexure P/1) passed by the Chief Executive Officer, Janpad Panchayat, Chhura, District Raipur and the order dated 17th November, 2006 (Annexure P/2) passed by the Collector, Raipur in Revenue Case No. 16/A-89/2006-2007, whereunder the petitioner has been declared as disqualified on the ground

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that the fourth child of the petitioner was born after 26.1.2001, on 29.6.2001. Birth of more than two living children after the 26th day of January, 2001 entails disqualification under Section 36 (1) (m) of the Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as 'the Adhiniyam, 1993').

2. Accordingly, the Collector, Raipur in exercise of its power under sub-section (3) of Section 36 of the Adhiniyam, 1993, declared the petitioner as disqualified by the order dated 17th November, 2006 (Annexure P/2).

3. The petitioner challenges the legality and validity of the order dated 17th November, 2006 passed by the Collector, Raipur on the ground that the enquiry was referred to the Tahsildar by the Collector, Raipur and during pendency of the enquiry, on the basis of the enquiry report submitted by the Sub Divisional Officer, Gariyaband after considering complaint and written submission of the petitioner and relevant documents, passed the order, which is vitiated.

4. Be that as it may, sub-section (4) of the Section 36 of the Adhiniyam, 1993 provides for appeal to Commissioner or Board of Revenue, respectively, whose orders in such appeal shall be final.

5. Sub-section (4) of Section 36 of the Adhiniyam, 1993 reads as under:-

> "Any person aggrieved by the decision of Collector or Commissioner, as the case may be, under sub-section (3), may, within a period of 30 days from the date of such decision appeal to Commissioner or Board of Revenue respectively whose orders in such appeal shall be final"

6. In view of clear statutory alternative provision available, there is nothing exceptional in the present case so asto call for indulgence of this Court in exercise of extraordinary discretionary jurisdiction under Article 226 of the Constitution of India.

7. Thus, this petition is dismissed as not maintainable. However, the right is reserved to the petitioner to take recourse to statutory alternative remedy as available under sub-section (4) of Section 36 of the Adhiniyam, 1993.

Sd/-
Satish K. Agnihotri
Judge

B/-